IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

ORDER

Nathar Mal & Anr. Vs. Addl.District Judge No.1 Bhilwara & others

S.B.CIVIL WRIT PETITION NO.2114/2006

Date of order : 18th May 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Manish Shishodia for the petitioners

BY THE COURT:

This writ petition has been submitted against the order dated 01.12.2005 passed by the Addl. District Judge No.1 Bhilwara rejecting an application submitted by the petitioners-appellants-defendants seeking amendment in the written statement at the appellate stage.

The petitioners, appellants against a decree for ejectment, sought amendment in the written statement with the submissions that the present plaintiff and his sister have filed a separate suit for division of property wherein the plaintiff's share in the property is stated at 9/42; and with such minimal share in the property, the plaintiff is not entitled to

seek eviction of the tenant from the suit premises on the ground of his reasonable and bona fide necessity; and cannot establish business in the suit premises without consent of other co-sharers. Yet another ground was sought to be inserted in the written statement that the plaintiff has got possession of another shop and, therefore, his professed need has come to an end.

The learned appellate court has rejected the application for amendment by the impugned order dated 01.12.2005 (Annex.7) on the consideration that a co-owner landlord could maintain a suit for eviction and other co-owners are not required to be impleaded parties while relying on a decision of this Court in Arun Kumar Vs. Surajmal Rawat : CDR 2005 (2) Rajasthan 1199. Regarding the averments sought to be taken about another shop, the appellate court found that such aspect of the matter has already come on record in evidence before the learned trial court and, therefore, there was no necessity for permitting any amendment and such fact cannot be said to be a 'subsequent event' so as to permit amendment in the written statement.

Assailing the order dated 01.12.2005 learned counsel for the petitioners Mr.Shishodia has strenuously contended that the petitioners do not seek to elongate or delay the proceedings and it has been pointed out that the petitioners

do not wish to lead any evidence in relation to the averments sought to be taken, however, such amendment being directly necessary for determination of real questions in controversy and going to the root of the matter deserve to be allowed and the learned appellate court has acted wholly illegally in rejecting the application for amendment.

Having heard learned counsel for the petitioners and having perused the material placed on record, this Court is clearly of opinion that the present writ petition remains totally bereft of substance and deserves to be dismissed.

So far the submission of the petitioners with reference to extent of share of the landlord-plaintiff in the suit property is concerned, suffice is to say that it is not the case of the petitioners that the plaintiff is not their landlord. Once plaintiff's right as landlord is conceded, he is entitled to maintain a suit without any necessity of joining other co-owners as parties to the suit. The amendment sought for was fundamentally baseless and the learned appellate court cannot be said to have committed any illegality in rejecting amendment to incorporate a baseless proposition.

So far the ground of subsequent event is concerned, it has been noticed by the learned appellate court that such fact was in the knowledge of the appellants-defendants during trial; and has been stated so by them in oral evidence. In the

aforesaid view of the matter, the learned appellate court cannot be said to have committed any error in rejecting such amendment regarding alleged subsequent event too, that cannot be said to be a subsequent event at all nor could be said to be necessary for determination of real questions involved in the case.

This Court is clearly of opinion that an interlocutory order passed by the civil court during the trial of the suit or hearing of the appeal deserves interference only when the order impugned could be said to be suffering from any error apparent on the face of record and leading to manifest failure of justice. The order impugned neither suffers from any error nor leads to manifest failure of justice.

The writ petition remains baseless and is dismissed summarily.

(DINESH MAHESHWARI),J.

MK